

REMARKS

Claims 8 to 16 are now pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph one (1) of the Office Action, claims 8 to 16 were rejected under 35 U.S.C. §102(b) as anticipated by Klatt, U.S. Patent No. 4,510,906.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

The “Klatt” reference refers to an accelerator pedal (for a road vehicle) which has a shiftable force pressure point that can be sensed by the driver. Using a control unit, this force pressure point is always shifted to the position having the most favorable fuel consumption when the vehicle is accelerating. For this purpose, the control unit is influenced both by the engine speed as well as by the engine characteristic – that is, by the type of engine used. Taking the engine characteristic into consideration is necessary because the minimally admissible speeds of the various engines differ. Furthermore, information regarding the engine temperature is useful so as not to overload an engine that is not yet at the operating temperature. The control unit is programmed so that the pressure point on the accelerator

pedal is always located at the position of the highest engine efficiency (column 2, lines 34 through 50).

In contrast to the subject matter of independent claims 8 and 16, the “Klatt” reference does not identically disclose (nor suggest) the feature, *in which the optimal operating point is determined as a function of an output variable to be generated by the drive unit and a current operating variable of the drive unit*. The “Klatt” reference merely refers to the dependence of the optimal operating point on current operating variables of the drive unit in the form of the engine speed and the engine temperature as well as the engine characteristic – that is, the type of engine used, but it does not identically disclose (nor even suggest) the dependence of the optimal operating point on an output variable to be generated by the drive unit, as provided for in the context of the claimed subject matter. Such an output variable to be generated by the drive unit, for example a setpoint torque, is not taken into consideration in the subject matter of the “Klatt” reference for determining the optimal operating point of the drive unit.

In this manner, the subject matter of claims 8 and 16 provides the advantage that an optimal operating point of the drive unit may be set even for an output variable to be generated. In contrast, the “Klatt” reference in no way ensures that at the operating point of the highest engine efficiency, at which the pressure point on the accelerator pedal is reached, a specified setpoint for an output variable of the drive unit can also be reached. The subject matter of the “Klatt” reference is directed toward an optimal acceleration of the vehicle with respect to fuel consumption (column 2, lines 50 through 57 and column 1, lines 13 through 22). The behavior of the internal combustion engine in the subject matter of the “Klatt” reference is therefore not efficiency-optimal for every output variable to be generated by the drive unit. This is revealed particularly and clearly in the case in which the driver overrides the pressure point of the accelerator pedal so as, for example, to initiate a safe passing operation (column 2, lines 62 through 68). In this operating state, the optimal efficiency set in accordance with the “Klatt” reference is obviously abandoned. That is, in such a passing operation, the subject matter of the “Klatt” reference offers no operating point having an optimal efficiency for the output variable of the drive unit to be generated.

In contrast, if, in accordance with claims 8 and 16, the optimal operating point is also made a function of the output variable to be generated by the drive unit, then it is possible to signal to the driver an optimal operating point in every operating state of the drive unit and to save even more fuel in this manner.

Accordingly, the "Klatt" reference does not identically disclose or suggest the features discussed above, so that claims 8 and 16 are plainly allowable for the foregoing reasons.

Claims 9 to 15 depend from claim 8 and are therefore allowable for the same reasons.

In summary, it is respectfully submitted that all of claims 8 to 16 are allowable for the foregoing reasons.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,
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